1957. File No. O Essential Commodities/51

Legal Department

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Subject:— Opinions under the Bombay Essential Commodities and Cattle (control) Act 1946.

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C O N T E N T S.

Legal Department File No. O.Essential Commodities/1951.

Sr.No.	R.I. / O.No.	Subject.	Pages.
	O.Essential Commodities. 1951.	Opinions under the Bombay Essential Commodities and Cattle (Control) Act, 1946.	
1.	14-P 30-8-1951.	Cl.(b), of Sec. 4(2) Public Carriers to make their trunks available to the Military authorities in an emergency on payment of a reasonable Compensation.	1-5.

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OFFICE OF THE R.L.A.

It appears that the Brigadier Commanding, Ahmednagar, has written to the Collector of Ahmednagar that 40 x 3 ton lorries are required by the Head Quarters to turn out all of their I.D. Columns at one time in the case of extreme emergency and has requested him to requisition the transport from civil source so that whenever the transport was required, he would be contracted accordingly. The District Magistrate, Ahmednagar, has written to Government inquiring whether the District Magistrates have been authorised by Government to requisition transport under any existing law. Secretary, H.D., considers that clause (b) of section 4(2) of the Bombay Essential Commodities and Cattle Control Act, 1946, is wide enough to call on at least public carriers to make their trucks available to the military authorities in an emergency on payment of a reasonable compensation. The R.L.A. is requested to advise.

The entry "motors vehicles" was inserted in Schedule I to the Bombay Essential Commodities and Cattle Control Act, 1946, under H.D. Notification No.6236/5(A), dated the 4th September 1948, but that entry was subsequently deleted by Government Notification, Civil Supplies Department, No.136/I, dated 29th January 1949, As the entry "motor vehicles" has been deleted, the second notification delegating the powers in respect of motor vehicles to certain officers also automatically lapsed. If motor vehicles are proposed to be brought within the pale of the Bombay Essential Commodities and Cattle Control Act, it will have to be inserted in Schedule I to that Act treating it as an essential commodity.

Assuming that the item "motor vehicle" is inserted in Schedule I to the Act, the next question for consideration is whether the provsions of section 4(2) (b) of that Act can be availed of to call on at least public carriers to make their trucks available to military authorities in an emergency on payment of reasonable compensation. Item 33 in the Union List (List I) in the Seventh Schedule to the Constitution of India Relates to acquisition or requisitioning of property for the

purposes of the Union, while item 36 in the State List (List II) in the Seventh Schedule relates to acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III. The proposal in the present case is to call upon the public carriers to make their trucks available to the military authorities in an emergency on payment of a reasonable compensation. It is apparent that the trucks are needed by the military authorities for movement of troops. If so, the purpose would be a Central purpose for which the requisitioning of the trucks is sought. Consequently, it appears therefore doubtful whether in view of the entry "motor vehicles" being now made in the Schedule I to the Bombay Essential Commodities and Cattle Control Act, the provisions of that Act can be resorted to for the purposes of requisitioning trucks, etc., for the Central purpose.

Assuming that the provisions of the Bombay Essential Commodities and Cattle Control Act, 1946, can be availed of, it appears that requisitioning of the trucks would not be legally feasible. Sub-section (1) of section 4 provides that the State Government, so far as it appears to it to be necessary or expedient for maintaining or increasing the supply, or for securing the equitable distribution and <u>availability at fair prices</u>, of any essential commodity or cattle may, by notified order, provide for regulating, etc. Clause (b) of sub-section (2) provides for regulating by licence, permit or otherwise the storage, movement, transport, distribution, disposal, <u>acquisition</u>, use or consumption of any essential commodity. There is no provision at all in this Act for requisitioning any property. The distinction between acquisition and requisition is now well established and the Constitution itself recognises the distinction (see item 36 in the State List and Item 33 in the Central List in the Seventh Schedule to the Constitution of India). The words "availability at fair prices" in sub-section (1) of section 4 and the word "acquisition" in clause (b) of section 4(2) would

clearly indicate that only powers for acquisition or purchase of the essential commodities at afair prices have been provided for. To require the public carriers to make their trucks ~~xxxxxxxx~~ available to the military authorities in an emergency on payment of a reasonable compensation would amount to requisitioning the trucks of the public carriers and not to acquisition. In the circumstances, it appears that the view taken by Secretary, H.D., is not correct. If Government wants to have power for requisitioning motor vehicles, Government will have to pass a legislation on the lines of Assam Act XXXII of 1950 providing for the requisition and control of vehicles.

Attention of H.D. is, however, invited to R.L.A's opinion No. 304P-Confl., dated 5th October 1938 advising Government that under section 42 of the Bombay Regulation 22 of 1827 it would be open to the District Magistrate to impress motor vehicles for the purpose of march of troops within his jurisdiction.

Sd/- J.R.Dhurandhar.
28/8.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 14-P- Confl., dated the 30th August 1951.

SNT/22.6.